SUPREME COURT OF THE UNITED STATES.

No. ~~191.~~ 108.

WILLIAM A. HADDEN, JOHN A. HADDEN, AND FRANCIS POTT, PLAINTIFFS IN ERROR,

vs.

HIRAM BARNEY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 191.

WILLIAM A. HADDEN, JOHN A. HADDEN, AND FRANCIS POTT, PLAINTIFFS IN ERROR,

vs.

HIRAM BARNEY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate	2	1
Pleas	3	2
Declaration	3	2
Statement of facts	7	3
Judgment	12	4
Waiver of security	16	5
Citation and service	17	6

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between William A. Hadden, John A. Hadden, and Francis Pott, against Hiram Barney, a manifest error hath happened, to the great damage of the said William A. Hadden, John A. Hadden, and Francis Pott, as is said, and as appears by their complaint. We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable James M. Wayne, senior justice of the Supreme Court of the United States, this sixteenth day of November, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

2 U. S. circuit court.

WILLIAM A. HADDEN *et als.*
v.
HIRAM BARNEY.

By virtue of the within writ of error, and in obedience thereto, I, Kenneth G. White, clerk of the circuit court of the United States for the southern district of New York, in the second circuit, do hereby certify and return the judgment and proceedings in the case, in the writ within mentioned, and that the annexed return contains a true and complete copy of the record and proceedings in said court, in the case of Wm. A. Hadden *et al. v.* Hiram Barney, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 25th day of November, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the said United States the eighty-ninth.

KENNETH G. WHITE, *Clerk.*

Filed Nov. 16, 1864.

3 Circuit court of the United States for the southern district of New York.

Pleas before the said court.

The Honorable Samuel Nelson, justice, at the United States court-rooms, in the city of New York, of the term of October, in the year 1863.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that on the 28th day of April, in April term, 1863, before the said justice, at the United States court-rooms, in the city of New York, comes William A. Hadden, John A. Hadden, and Francis Pott, by John H. Platt, their attorney, and bring unto said court, before the said justice, their certain declaration against Hiram Barney, being in custody, &c., of a plea of trespass on the case, which said declaration follows in these words, to wit:

U. S. circuit court.

WILLLIAM A. HADDEN, JOHN A. HADDEN, AND FRANCIS POTT
ag'st
HIRAM BARNEY.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William A. Hadden, John A. Hadden, and Francis Pott, composing the firm of Hadden & Co., the above-named plaintiffs, come here into court, and by John H. Platt, their attorney, suggest and give the court now

4 here to understand and be informed that heretofore, to wit, on the sixth day of March last past, an action was commenced in the supreme court of the State of New York, according to the laws of the State of New York, and the rules and practice of said court in such case made and provided, in favor and in the name of the said plaintiffs against the said defendant herein upon and for the same cause of action hereinafter set forth, and the summons therein was filed in the clerk's office of the said supreme court on the sixth day of March, 1863; that the defendant afterwards, by E. Delafield Smith, his attorney, duly appeared in said action, and such proceedings were thereupon had that afterwards, and on the 30th day of March, in the year of our Lord one thousand eight hundred and sixty-three, the said action was in due form of law removed by writ of certiorari, for further prosecution and trial into this court, according to the act of Congress in such case made and provided, and the clerk of said supreme court did return the said writ, with the summons aforesaid, and did file the same in this court; which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore let the further proceedings and trial in this action

5 against the defendant be continued in this court.

And the plaintiffs accordingly, by their attorney aforesaid, complain of the defendant herein in a plea of trespass on the case for that, whereas the said defendant, on the first day of March, one thousand eight hundred and sixty-three, at the city of New York, was indebted to the plaintiffs in the sum of ten thousand dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of the said defendant; and for other money by the said plaintiffs before that time laid out and expended for the said defendant and at the request of the said defendant; and for other money by the said defendant before that time had and received to and for the use of the said plaintiffs. And being so indebted the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook and then and there faith-

fully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when the defendant should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, accounted together with the said
6 plaintiffs of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiffs in the further sum of ten thousand dollars of lawful money as aforesaid. And being so found in arrear and indebted to the said plaintiffs, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant (though often requested, &c.) hath not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs the said defendant hath hitherto wholly refused, and still doth refuse, to the damage of the said plaintiffs of ten thousand dollars. And thereof the plaintiff brings suit, &c.

JOHN H. PLATT, *Plaintiffs' Att'y.*

7 And the said defendant, Hiram Barney, by E. Delafield Smith, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form, as the said plaintiffs in this suit have above thereof declared against the said defendant. And of this he puts himself upon the country. And the said plaintiffs do the like, &c.

Therefore the issue above joined is ordered by the said court to be tried at the circuit court, appointed to be held at the United States court-rooms, in the city of New York, in and for the southern district of New York, on the third Monday of October, 1863.

And thereupon, in October term last aforesaid, at the place aforesaid, came the parties aforesaid, by their respective attorneys aforesaid, before the Honorable Samuel Nelson, the justice aforesaid, before whom said cause was to be tried, and thereupon, a jury was waived and the following was agreed upon, to be incorporated in the record as follows:

Statement of facts.

U. S. circuit court, for the southern district of New York.

WILLIAM A. HADDEN, JOHN A. HADDEN, AND FRANCIS POTT.
against
HIRAM BARNEY.

8 The above action having come on for trial before the Honorable Samuel Nelson, at circuit court of the United States for the southern district of New York, at the United States court-rooms, in the city of New York, in October term, 1863, a jury trial was waived by the respective parties, and the same was submitted to the decision of the court, upon the following agreed statement of facts. And if upon said statement the court should be of opinion that the plaintiffs were entitled to recover the amount of duties paid by them under protest, then judgment was to be for the plaintiffs for said amount, together with the interest thereon from the time of pay-

ment, which was on the first day of October, 1862, with costs, and judgment was to be so entered accordingly; otherwise, judgment was to be given and entered for the defendant with costs.

That the plaintiffs, at the time mentioned in the pleadings, were a mercantile firm, under the name of Hadden & Co., and on the 28th day of August, 1862, imported into the port of New York, from Liverpool, in England, eight bales or packages of Taysan raw silk, the growth or the produce of
9 China, valued at $16,903, and which merchandize was duly entered at the custom-house in said city.

That on the 11th day of September, 1862, the plaintiffs imported from Liverpool aforesaid into said port of New York, and duly entered at the custom-house in said city, eight packages of raw silk, the growth or produce of Persia, valued at $4,858.

That on the 17th of September, 1862, they imported into the said port of New York, from Liverpool aforesaid, and duly entered in said custom-house four bales or packages of Taysan raw silk, the growth or produce of China, valued at $3,097.

That on the 23d of September, 1862, the plaintiffs imported into said port of New York, from Liverpool aforesaid, and duly entered into said custom-house, thirty-one packages of raw silk, the growth or produce of China, valued at $27,053.

That the collector of customs of the United States, the defendant, who was at said dates, and is now, collector of customs of the United States for said port of New York, thereupon decided that said merchandize was subject, under section 14 of the act of Congress entitled "An act increasing temporarily the duties on imports, and for other purposes," passed July 14, 1862, to a duty of ten per cent. ad valorem, amounting on the first
10 importation to the sum of $1,690 30, on the second to $485 80, on the third to $309 70, and on the fourth to $2,705 30, in all amounting to the sum of $5,191 10.

That the plaintiffs thereupon, in order to obtain possession of said merchandize, paid said several duties, under protest in due form of law.

That thereupon the plaintiffs, after such decision of said collector and payment as aforesaid, presented their memorial or petition to the Secretary of the Treasury, asking that said duties might be released and returned to them, claiming that said merchandize was not subject to any duty; but that the decision of the collector was sustained by the Treasury Department, and the plaintiffs' petition denied.

E. DELAFIELD SMITH, *Def't's Att'y.*
JOHN H. PLATT, *Pl'ffs' Att'y.*

Messrs. Slosson and Hutchins.

And thereupon, after hearing the counsel for the plaintiffs, and Mr. E. Delafield Smith, counsel for the defendant, upon the statement of facts aforesaid, the said justice decided that the said merchandize was dutiable
11 under the acts of Congress in such case made and provided, and that said duties had been properly imposed by said collector, and ordered judgment for the defendant with costs.

12 Therefore it is considered that the said plaintiffs take nothing by their said declaration, but that they be in mercy, &c.

And it is further considered by the said court now here that the said defendant do recover against the said plaintiffs the sum of one hundred and fifty dollars, for his costs and charges by him about his defense in this behalf laid out and expended, by the said court now here adjudged to the said defend-

ant, and with his assent, according to the law and practice of the court, and that the said defendant have execution thereof, &c.

Judgment signed this 22d October, 1864.

R. E. STILWELL, *Dep. Clerk.*

13 Endorsed: U. S. circuit court. William A. Hadden, John A. Hadden, and Francis Pott against Hiram Barney. Judgment record. E. Delafield Smith, def'ts att'y. Filed November 7, 1864.

14 Circuit court of the United States for the southern district of New York.

WILLIAM A. HADDEN, JOHN A. HADDEN, and Francis Pott *agst.* HIRAM BARNEY. } In error.

Afterwards, to wit, in October term, 1863, of said court, before the Honorable Samuel Nelson, justice aforesaid, comes the said plaintiffs, by John H. Platt, their attorney, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit, that judgment was given therein for the defendant upon the statement of facts in said record, whereas judgment should have been given for the plaintiffs with costs. Wherefore the plaintiffs pray that the judgment aforesaid for the sum aforesaid may be revoked and annulled, and that judgment be given for the plaintiffs, with costs, &c.

JOHN H. PLATT, *Pl'ffs' Att'y.*

15 Circuit court of the United States for the southern district of New York.

HIRAM BARNEY *ads.* WILLIAM A. HADDEN, JOHN A. HADDEN, and Francis Pott.

And hereupon the said defendant, by E. Delafield Smith, his attorney, comes into court and says that there is no error in the record and proceedings aforesaid, or in giving judgment aforesaid. Wherefore he prays that the judgment aforesaid, in form aforesaid given, may be in all things affirmed.

E. DELAFIELD SMITH, *Def't's Att'y.*

Endorsed: U. S. circuit court. William A. Hadden, John A. Hadden, and John A. Pott *ads.* Hiram Barney.
Filed November 16, 1864.

16 U. S. circuit court.

WILLIAM A. HADDEN AND OTHERS *agst.* HIRAM BARNEY.

The plaintiffs being about sue out a writ of error upon the judgment herein, the security thereupon required by law is waived.

August, 1864.

E. DELAFIELD SMITH, *U. S. Dist. Att'y.*

Endorsed: Supreme Court. William A. Hadden and others *agst.* Hiram Barney. Waiver of security on writ of error.
Filed Nov. 16, 1864.

17 By the Honorable Samuel Nelson, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to Hiram Barney.

Whereas William A. Hadden, John A. Hadden, and Francis Pott lately issued out of the Supreme Court of the United States a writ of error, directed to the judge of the circuit court of the United States for the southern district of New York, in the 2d circuit, stating that in the record and proceedings as also in the rendition of the judgment of a plea in the said court before the judge thereof, between William A. Hadden, John A. Hadden, and Francis Pott, plaintiff, and Hiram Barney, defendant, a manifest error hath happened to the great damage of the said plaintiffs. And whereas, for the correction of that error in due manner, the said writ has been issued, returnable at the next stated court of the United States, to be held at the Capitol, at the city of Washington, on the first Monday of Dec'r next: You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the said first Monday of Dec'r next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 16 day of Nov'r, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

S. NELSON.

18 Endorsed: U. S. circuit court. William A. Hadden and oth's *agst.* Hiram Barney. Citation. John H. Platt, plffs' att'ys.

Due service of a copy of within citation is hereby admitted, Nov. 15, '64.

E. DELAFIELD SMITH, *Def'ts Att'y.*

Filed Nov. 16, 1864.

Filed in Supreme Court November 28, 1864.

SUPREME COURT

OF THE UNITED STATES.

WILLIAM A. HADDEN, JOHN A. HADDEN,
AND FRANCIS POTT,
Plaintiffs in Error,

vs.

HIRAM BARNEY.

POINTS FOR THE PLAINTIFFS IN ERROR.

JOHN SLOSSON,
WALDO HUTCHINS,
Of Counsel for Plffs. in Error.

New York:
M. B. BROWN & CO., LAW PRINTERS, 201 & 203 WILLIAM STREET.

M. B. Brown & Co., Law Printers, 201 and 203 William St., N. Y.

SUPREME COURT

OF THE UNITED STATES.

WILLIAM A. HADDEN, JOHN A. HADDEN, and FRANCIS POTT,
Plaintiffs in Error,
vs.
HIRAM BARNEY,
Defendant in Error.

In Error to the Circuit Court of the U. S. for the Southern District of New York.

POINTS FOR THE PLAINTIFFS IN ERROR.

The case comes up on a Writ of Error to the Circuit Court for the Southern District of New York, issued on a judgment of that Court, deciding that certain articles of merchandise (raw silk), enumerated fol. 9 of Error Book, were dutiable, under section 14 of the act of Congress passed July 14, 1862, entitled "An Act increasing temporarily the duties on imports, and other purposes."

FIRST.—Section 14 of the act of July 14, 1862, does not apply to raw silk, the produce of China or Persia, imported into New York from England.

That section is as follows:

"And be it further enacted that from and after the day and year aforesaid [1st Aug., 1862] there shall be levied, collected, and paid on all goods, wares and merchandise of the growth or produce of countries beyond the Cape of Good Hope, when imported from places this side the Cape of Good Hope, a duty of ten per cent. ad valorem, *and* [in *italics* in the published volume of the Statutes] in addition to the duties imposed on any such articles when imported directly from the place or places of their growth or production."

12 Stats. at Large, ps. 557—8.

1. It is clear that previous to this act, "silk, raw, or as reeled from the cocoon, not being doubled, twisted, or advanced in manufacture any way, and silk cocoons and silk waste," were *duty free.*

   See Tariff Act of March 2, 1861, s. 23.
   12 Stats. at Large, p. 193—196.
   Ditto March 3, 1857, sec. 3, sched. 1.
   Stats. at Large, p.

2.—Interpreting the statute by its own language, its object was, we think, simply to impose an *additional* duty of 10 per cent. *ad val.* on articles the produce of countries beyond the Cape of Good Hope, *when* such articles were imported from places *this side* of the Cape—that is, a duty in addition to the duties already imposed on *such* articles, when imported *directly* from the *place of their production*, the discrimination depending on the place of their *export.*

This exposition is simple, natural, and in perfect harmony with, and, as we contend, absolutely required by the language of the statute. The word "such," following the words "duties imposed on any," fixes indisputably the application

of the statute to those productions *which were already dutiable* "when imported directly from the place or places of their growth or production." The language is, "in addition to the duties imposed (already imposed) on any *such* articles."

The word "and," followed by the words "in addition," in sec. 14 [supposing that word, which is printed in the act in *italics*, to have been in the statute as passed, which is very doubtful], couples the two branches of the section together, and applies the enactment to but one class, to wit, to productions already dutiable. If the word "and" were omitted, there could be no question on this subject; but the meaning is still the same; because if the word "and" is not intended to couple the two branches of the section, then the words "and in addition," &c., &c., to the end of the section, become senseless and absurd, for nothing is *enacted* after the word "and." This is the interpretation contended for by the other side, and which makes the first part of the section stand independently of the other, and converts it into a positive enactment of a duty on raw silk, and leaves the latter portion of the section to take care of itself.

The article of raw silk is not mentioned in section 14, nor any other article, not then dutiable, which it naturally would have been, had it been the intention of the Legislature to impose duties for the first time on productions then exempt.

This is further manifest from the fact that wherever the act creates a *new duty*—that is, subjects articles previously exempt, to a duty—*it says so.* See sections 5, 6, 8, 12 of the act, in each of which occur the words "and on such as may be now exempt from duty."

Again: The title of the act throws light on

the meaning of section 14. It is "An Act *increasing* temporarily the duties on imports, and for other purposes."

Again: The words "in addition" are to be taken with those immediately following, to wit, "to the duties imposed on such articles *when imported directly* from the place or places of their growth or production."

Raw silk thus imported, was never subject to any duty.

3. It is clear, then, that the Legislature intended but one thing in section 14, to wit, to make the *importation* from places *this side* the Cape of Good Hope, of productions of countries beyond the Cape, the *occasion or cause* of imposing an *additional* duty on such productions as were dutiable before, when imported directly from those countries.

4. What we contend for is manifestly the common understanding of this statute.

In a compilation of the tariff of 1862, published by Mr. Anstice, and on the title page printed as "official," there is a tabular statement of the comparative duties under the acts of 1862 and 1857, in *both* which "silk, raw or as reeled from the cocoon," is marked "free."

In a pamphlet containing the tariff act of 1865, published in 1865, by G. D. Ogden, chief entry clerk of the Custom-House of New York, is contained a "Tariff; or Rates of Duties, imposed by Act of Congress of March 2, 1861, with Addenda of Aug. 5, 1861, Dec. 24, 1861, *July* 14, 1862, and *March* 3, 1863, June 30, 1864, and March 3, 1865, on all goods, wares, and merchandise imported into the United States of America," in which, among articles enumerated as *exempt*, is "silk, raw or as reeled from the cocoon, not advanced in manufacture at all."

The marginal note to section 14 of the act of 1862, is, "Ten per cent. additional duty on tea and products of countries beyond the Cape of Good Hope," if imported, &c.

13 Stats. at Large, 557-8.

5. The whole object of the Legislature in imposing duties on foreign importations, and the whole policy of the Government in that respect is [apart from revenue] to encourage domestic manufactures, by imposing restrictions on goods *manufactured* (in whole or in part) abroad. The raw material is as necessary for our own as for foreign manufactures, and it is not to be supposed for an instant that Congress *intended* to lay a duty on such, especially in the face of all its previous enactments to the contrary, unless by an act so clear and explicit that there cannot be two interpretations in respect to it.

The imposition of a duty on raw silk is a departure from the previous policy and legislation of the Government, and the intention to make such imposition ought not to be left to inference, from an indefinitely and badly-worded statute:

"Where the general system of the laws is departed from, the legislative intention must be expressed with irresistible clearness to induce a Court of Justice to suppose a design to effect such objects."

Chief-Justice Marshall, in Fisher *vs.* Blight, 2 Cr., p. 390.

6. It is wholly unnecessary to introduce *raw* silk into the acts of '62 and '63, in order to sustain them, as there are a great variety of manufactured subjects to which they will apply.

SECOND.—The act of March 3d, 1863 (sec. 2d), does not vary this construction. This act was chiefly relied upon at the trial, as settling the meaning of the act of 1862. That sec. is as follows:

"Be it further enacted that sec. 14 of an act, entitled, &c. (act of July 14th, 1862,) be, and the same is herby modified so as to allow cotton and raw silk, as reeled from the cocoon, of the growth or produce of countries beyond the Cape of Good Hope, to be exempt from any additional duty when imported from places this side of the Cape of Good Hope, for two years from and after the passage of this act.'

1. If sec. 14 does not *impose* a duty on "cotton and raw silk as reeled from the cocoon," the act of March, 1863, does not—it does not profess to do so. At the utmost it only assumes that the previous act, has already done so.

2. If sec. 2d of the act of 1863 were incorporated into sec. 14th of the act of 1862 (under the rule of statutes in *pari materia*), still a duty on raw silk, &c., would not thereby be *imposed;* for the act of 1862, as before argued, speaks of productions already subject to duty, and imposes *additional* ones, and the act of 1863 also refers to these duties as "additional."

   The word "additional," in the act of 1863, cannot be rejected. It is synonymous with the words "in addition," in the act of '62, and what these words intended in that act has been already considered. The act of '63 refers to the *additional duties* supposed to be imposed by the act of '62.

   If Congress intended by the act of '62 to impose *additional* duties only, it did not, by naming raw silk, in the act of '63, as subject to an *additional* duty by the act of '62, convert the act of '62 into an act *imposing* a new duty on an article which was not dutiable in '62.

3. The rule that statutes in *pari materia* are to be construed together as one statute, does not go the length of permitting a subsequent statute to incorporate a *new provision* into a preceding statute. The utmost it allows is, that the two may be read together as one statute, and if the provisions of section 2 of the act of '63 were actually incorporated in section 14 of the act of '62, it would create a palpable absurdity, unless it be conceded, that the act of '62 does impose a duty on raw silk, and unless the word "additional" be stricken from the act of '63, which cannot be done.

4. If it be said that the act of '63 shows that the Legislature *intended* to impose a duty by the act of '62—in other words, that it is a legislative interpretation of the act—the answer is, that, if such was their intention, they have failed to effect their object by the very language they have employed in the statutes.

5. To allow the act of '63 to convert, by a legislative interpretation, the act of '62 into an act imposing a new duty on raw silk, would work a great injustice on these plaintiffs, who made all their importations in the Fall of '62, and long before the passage of the act of '63.

Courts never disregard this consideration in the construction of statutes, especially in doubtful cases; and this Court will hesitate before it gives what is in effect a *retroactive* operation to the act of '63, to the prejudice of those who acted under a previous statute, which, without the legislative interpretation of the subsequent act, would not have imposed upon them the duty complained of.

THIRD.—It has always been the policy of the Government not to tax raw silk imported from abroad.

This can be shown by reference to all the tariff laws.

We refer to a few of the later acts, not only in proof of this proposition, but also as furnishing a guide or index to the true meaning of sec. 14, of the act of 1862, and a *Legislative interpretation* quite as strong as the act of 1863.

1. The act of 1863 itself, sec. 2, already referred to.

   This act, passed only seven months after the passage of the act of '62, while it shows that Congress was mistaken as to the fact of raw silk being subject to any duty by any previous law, or overlooked the fact that it was not so subject, also shows that it was not policy of the Government to impose any duty on that article at all.

2.—The act of June 30, 1864, entitled "An Act to increase duties on imports, and for other purposes."

13 *Stats. at Large*, 202.

This act went into operation 1st July, 1864, eight months *before* the expiration of the *two* years, during which, by the act of 1863, any "additional" duty on raw silk and cotton was suspended.

By *sec.* 6, a duty of two cents a pound is imposed on *raw cotton.*

By *sec.* 18, sec. 14 of the act of 1862 is *repealed*, and with it of course fell the modifying act of 1863.

Sec. 18 then *re-enacts* sec. 14 of the act of '62 in the same terms, except as noted in the following quotation:

SEC. 18. "And be it further enacted that on "and after the day and year this act shall take "effect [1st July, 1864,] there shall be levied, "collected, and paid on all goods, wares, and "merchandise of the growth or produce of the "countries east [in the act of '62 'beyond'] of "the Cape of Good Hope, except raw cotton "[new, but already by sec. 6 subjected to a "duty of two cents a pound], when imported "from places west [in the act of '62 'this side'] "of the Cape of Good Hope, a duty of ten per "cent. *ad valorem* [the word 'and' in act of '62 "here omitted], in addition to the duties im-"posed on any such articles when imported "directly from the place or places of their "growth or production."

If, by the act of '62, raw silk had in the judgment of Congress been subjected to a duty, and that body intended by this act of '64 to do away with the suspension of the duty created by the act of '63, and restore the duty, they would naturally have simply repealed the act of '63, leaving the act of '62 in force; but if Congress, by the act of '62, intended to impose *additional* duties only, and that act was so worded as to give rise to doubts on that subject, and they intended still to adhere to the policy of additional duties, then the Legislature would naturally repeal the acts of '62 and '63 as of dubious import, and re-enact the former statute ('62), so worded and modified as to leave no doubt whatever of its meaning; and this they have done, for by the simple omission of the word "and" before the words "in addition," the meaning of the enactment is put beyond any doubt—it cannot be made applicable to other than merchandise *already dutiable.* We have already contended that such is the true meaning of the act of '62, notwithstanding the presence of the word "and" in that act, but the omission

of it in ,the act of '64 puts it beyond all doubt, as respects the latter statute. That the act of '64 does not impose a duty on raw silk, is too obvious to admit of discussion. No pretence of this kind is made at the Custom-House in New York. The Tariff Compendium of 1864, prepared by Mr. Ogden, and reciting that act, as well as the acts of '61, '62, and '63, places among the articles exempt from duty, "silk cocoons; silk raw, or as reeled from the cocoon, not advanced in manufacture at all; silk waste." If, then, "raw silk" was subject to a duty under the act of '62, it must have been by reason of the word "and" in that statute, since the two acts ('62 and '64) are substantially identical except in that word. We submit that the *repeal* of the statute of '62, for the obvious purpose of getting rid of that word, and its precise re-enactment, *ipsissimis verbis* in all other respects but that word, dropping it altogether, thus freeing the statute from all possible ambiguity, and the fact that the Legislature did this by repeal and re-enactment, instead of by amendment, shows most unmistakeably that in its opinion, that word should never have been in the former statute, and furnishes a most conclusive *Legislative interpretation* of that statute. If, on the doctrine of statutes in *pari materia*, it was proper to refer to the statute of '63 as interpreting that of '62, *a fortiori*, may we refer to the act of '64 as furnishing a clearer and more unmistakeable index of the true intention of Congress in passing the act of '62?

This doctrine of construing statutes in *pari materia*, as one, is best expressed by Lord Mansfield, in Rex *v.* Loxdale, 1 Burr, p. 44: "Where there are different statutes in *pari materia*, two made at different times, or even expired, and not referring to each other, they shall be taken and construed together as *one system* and explana-

tory of each other; and Chancellor Kent, 1 Com., 464 (marg.), says: "It is to be inferred that a Code of statutes, relating to one subject, was governed by *one spirit and policy*, and was intended to be consistent and harmonious in its several parts and provisions."

Taking, then, all these statutes together, as constituting *one system*, and looking at the fact that raw silk had never been subject to duty; that the act of '62 speaks only of additional duties, and the act of '63 the same; that the act of '63 arrested the imposition of duties on that article almost as soon as Congress discovered they had been imposed under the act of '62; that in '64 Congress summarily repealed both acts, and then passed another identically the same, with the single exception of blotting out the only word in the statute of '62 which had given rise to the idea of a duty on raw silk, and that in '65 Congress re-enacted this same statute of '64, with a still stronger protest against the idea of a duty on that article, can there be a doubt that the "one spirit and policy" which has always governed Congress in respect to this subject, has been—exemption of raw silk from any duty, no matter from whence imported.

The exception of "raw cotton" in the act of '64 was simply because the act itself had imposed on that article a duty of two cents a pound.

3. The act of 3d of March, 1865, entitled "An Act amendatory of certain acts imposing duties upon foreign importations."

This act was to take effect on and after 1st April, 1865. (Sec. 9.)

It amends certain sections of the act of '64, but does not amend or alter that part of section 6 of that act which imposes a duty of two cents a pound on *raw cotton.*

It then (sec. 6) enacts as follows:

"SEC. 6. And be it further enacted that there "shall be hereafter collected and paid on all "goods, wares, and merchandise of the growth "or produce of countries [east] of the Cape "of Good Hope [except raw cotton and raw silk "as reeled from the cocoon or not further ad- "vanced than tram-thrown or organzine,] "when imported from places [west] of the Cape "of Good Hope, a duty of ten per cent. *ad valor-* "*em*, in addition to the duties imposed on any "such articles when imported directly from the "place or places of their growth or production."

It will be observed that the date of this last enactment (3d March, 1865,) was the date of the expiration of the *two years' exemption* prescribed by the act of 1863. But as the act of '63 must have fallen with the act of '62, by the repeal of the latter in '64, as above stated, this section of the act of '65 can be considered only as a *re-enactment* of section 18 of the act of '64, with the addition in the excepting clause of "raw silk as reeled from the cocoon, and not further advanced than tram-thrown or organzine."

This *exception* was evidently done for *greater caution.* Congress did not intend to leave it a question open for discussion whether the act of '63 (expiring on the date of the passage of the act of '65) fell with the act of '62, by the repeal of the latter in '64; nor whether, under the act of '64 itself, "raw silk" might not be considered dutiable. No serious question of this kind, it would seem, could ever arise, and as has been shown, none has arisen, but Congress might wisely, from abundant caution, by one simple sentence in the act, exclude all discussion on the subject, and authoritatively declare what always had been, and then was, the National policy on this

subject, interrupted only during a period of seven months by an interpretation given to the statute of '62, which Congress intended peremptorily to repudiate.

From a review of these statutes it follows, we think, conclusively:

1. That with the exception of *seven months* [the interval between the time when the act of '62 went into effect and that of the passage of the act of '63] there was no period of time when it could be pretended that raw silk was subject to any duty, and that it has always been the policy of the Government not to subject it to any duty.

2. That the only ground on which it was, during that short period, claimed that a duty was imposed, was that the word "and," preceding the words "in addition," in the act of '62, created such an ambiguity in that statute, that it left it open to such a construction.

3. That Congress, by *repealing* the act of '62, while the exemption prescribed by the act of '63 was still running and unexpired, and then re-enacting it in its amended form, dropping the word "and," intended to declare that the act of '62 had been *misinterpreted* and misapprehended, to the injury of commerce and contrary to the policy of the Government.

4. That, taking the whole legislation on this subject together, in order to make it a consistent and harmonions system, the act of '62 must be read as the act of '64 reads, and "raw silk" be held wholly outside the purview of either statute.

FOURTH.—The act of 1862 is in conflict with sec. 8, sub. 1, of the Constitution of the United States, which requires that "all duties, imposts, and excises shall be uniform throughout the United States," if the words "beyond" and "this side of" are to be retained, or not be considered as synonymous with "East" and "West," as used in the later statutes, and those words are to be construed according to the geographical position of the place of import. This was the situation of the question at the time of trial, and it was then urged, that, as the statute stood, these goods, if they had been imported into San Francisco, would have been duty free, whereas (if the law imposed any duty at all) they would have been subject to duty if imported into New York.

FIFTH.—The Judgment should be reversed and a new trial awarded.

JOHN SLOSSON,
WALDO HUTCHINS,
of Counsel for Pltffs. in Error.

In the Supreme Court of the United States.

DECEMBER TERM, 1866.

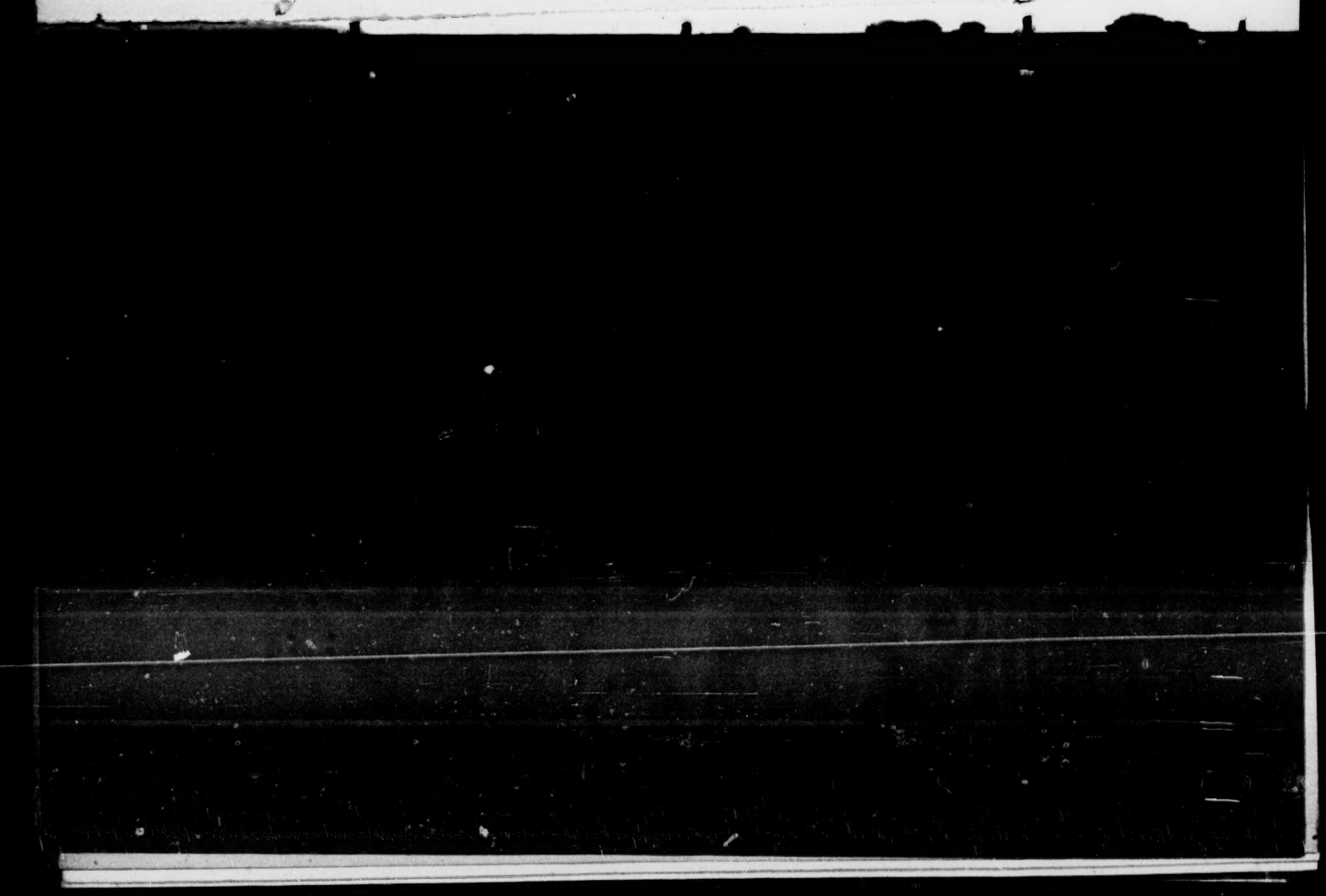
WM. A. HADDEN, JOHN A. HADDEN, AND FRANCIS POBB, PLAINTIFFS IN ERROR.
vs.
HIRAM BARNEY.

No. 108.

Appeal from the Circuit Court of U. S. for the southern district of New York.

BRIEF OF UNITED STATES.

HENRY STANBERY,
J. HUBLEY ASHTON,
For United States.



WILLIAM A. HADDEN ET AL. v. HIRAM BARNEY.

NELSON, C. J.:

The question in this case arises under the fourteenth section of the act of Congress of July 14, 1862, which is as follows:

"That from and after the day and year aforesaid (August 1, 1862) there shall be levied, collected, and paid on all goods, wares, and merchandise of the growth or produce of countries beyond the Cape of Good Hope, when imported from places this side of the Cape of Good Hope, a duty of ten per cent. *ad valorem*, and in addition to the duties imposed on any such articles when imported directly from the place or places of their growth or production."

Several shipments have been made by the plaintiffs since the passage of this act, from England, of raw silk, the produce of Persia and China, upon which this ten per cent. duty has been imposed, and paid under protest. This suit was brought to recover back the same as illegally exacted.

It is admitted that, at the time of the passage of the act, raw silk was free of duty, and it is claimed on the part of the importers that, upon the true construction of the fourteenth section, the ten per cent. duty is imposed, and was intended to be imposed, only upon such articles, the growth or produce of countries beyond the Cape of Good Hope, as at the time were liable to the payment of duties; in other words, was intended as an additional duty, and did not, therefore, embrace articles which were duty free. The previous sections of this act undoubtedly lend some countenance to this construction. Many of them are devoted to the imposition of additional duties upon articles enumerated, and which were before liable to duty, and others impose duties in lieu of those heretofore imposed, and also "on such as may now be exempt from duty," specially enumerating the articles. It is claimed that, in these sections, the additional duty is limited to such articles only as were previously liable to duty; and, when intended to subject to duty any articles which were exempt, they were mentioned in express terms.

It is not to be denied that, if this fourteenth section is to be construed as intended to extend the principle, which seems to have governed Congress in the adjustment of the duties in the previous portion of the act, to articles the growth or produce of countries beyond the Cape of Good Hope, but imported from places this side of it, the raw silk of the shipments in question would not be included, but would remain free of duty.

The phraseology of this section, however, is different, and may bear a different construction. The first clause imposes the duty of ten per cent., in express terms, upon all goods, &c., the growth or production of countries beyond the Cape, when imported from places this side of it—and the latter clause does not necessarily qualify it, so as to exclude or take out of it the free articles. "And in addition to the duties imposed on any such articles, when imported directly from the place or places of their growth or production" may, we think, well enough mean, that such articles as already pay a duty under existing acts of Congress, the ten per cent. duty imposed by the section shall be in addition. The phrase "any such articles," in the connection found, does not necessarily mean all such articles as are covered by the first clause, but may be regarded as limited to the class there covered, which were already chargeable with duty. As to these, the ten per cent. shall be in addition. This view satisfies the clause, [illegible] it consistent with the broad and unlimited terms of the first. I agree

the section is obscure, and its true meaning a matter about which different minds are likely to arrive at different conclusions.

Some light may be reflected upon this section from an amendment of it by the act of 3d March, 1863, some seven months after its passage. The second section of that act modified this fourteenth section "so as to allow cotton and raw silk, &c., of the growth or produce of countries beyond the Cape of Good Hope to be exempt from any additional duty, when imported from places" this side of it, for two years. These two articles were exempt from duty under the act of March 2, 1861, and were so at the time of the passage of the act of 14th July, 1862. The duty imposed by the fourteenth section of that act, therefore, was not an additional duty, as seems to have been supposed by Congress from their amendment. They were mistaken in supposing that the ten per cent was an additional duty, but the amendment clearly indicates that Congress understood this ten per cent. duty had been imposed by the fourteenth section, and the two acts, being *in pari matria*, help to interpret each other.

We are inclined, therefore, not without some difficulty, to hold that raw silk, the article in question, was subject to a duty of ten per cent. under the fourteenth section of the act referred to; and, as the shipments of the plaintiffs occurred before the modification of the section, the duty was properly levied, notwithstanding this objection.

Another objection is taken by the counsel for the plaintiffs, involving the constitutionality of this fourteenth section, founded upon the following position of the case:

As we have seen, the ten per cent. duty is imposed upon articles the growth or produce of countries beyond the Cape of Good Hope, when shipped from places this side of it, as, in the present instance, from England. Goods coming from China or Persia, the country of the products in question, to the ports of the United States on the Atlantic, whether carried round the Cape of Good Hope or across the country by the way of Constantinople, would be, in relation to the Atlantic ports, the products of countries beyond the Cape, and chargeable with the discriminating duty. But the same goods carried from either of these countries, in the usual course of trade, in the opposite direction to ports on the Pacific coast, would not be articles of the growth or produce of countries beyond the Cape. As to these ports, the countries of production would be this side of the Cape, and, hence, not within the words of the act imposing the discrimination. And, if so, the duties upon the articles imported into the Atlantic ports would be ten per cent. greater than when imported into ports on the Pacific, which would be in violation of the provision of the Constitution forbidding a preference of the port of one State over that of another.

The only answer that we need give for the present to this objection is, it will be found, on looking through the several tariff acts, that the phraseology, "beyond the Cape of Good Hope," is used as an equivalent for east of the Cape of Good Hope; and in seven instances the latter phrase is used instead of the former, and even both phrases in the same act, to express the same idea; and hence, over whatever portion of the globe the goods may be carried, whether direct to the Pacific or round the Cape to the Atlantic ports, they are the growth or produce of countries east of the Cape, and therefore subject to the increased duty.

Judgment for the defendant.

In the Supreme Court of the United States.

DECEMBER TERM, 1866.

WILLIAM A. HADDEN, JOHN A. HADDEN, and Francis Pobb, plaintiffs in error,
vs.
HIRAM BARNEY.
} No. 108.

In error to the Circuit Court of the United States for the southern district of New York.

THE CASE.

This is an action for money had and received, originally commenced in the Supreme Court of the State of New York, (Rec., p. 2,) and thence removed by the defendant into the Circuit Court of the United States, by writ of *certiorari*. The object of the plaintiffs is to recover back from the defendant $5,191 10, with interest from the 1st of October, 1862, which sum at that date was paid by them to the defendant, as collector of the port of New York, under protest, as duties on certain raw silk, the produce of Persia and China, in Asia, which had been imported by the plantiffs from Liverpool.

The parties waived a jury, and agreed on a statement of facts. (Rec, pp. 3–4.) The controversy is confined to the question of the proper interpretation of the following section of the act of Congress of 14th July, 1862, previously to the date of which it is admitted that the goods described were free of duty:

SEC. 14. *And be it farther enacted, That from and after the day and year aforesaid, there shall be levied, collected, and paid, on all goods, wares, and merchandize of the growth or*

produce of countries beyond the Cape of Good Hope, when imported from places this side of the Cape of Good Hope, a duty of ten per cent. ad valorem, and in addition to the duties imposed on any such articles when imported directly from the place or places of their growth or production. (12 *Stats. at Large*, 557–558.)

The "*day and year aforesaid*," as mentioned in the first clause of this section, is the "*first day of August*, 1862," as the context shows. (§ 1, and all succeeding sections of the act. Ibid., 543.)

The following section of the act of 3d March, 1863, was introduced to throw light on the former:

SEC. 2. *And be it further enacted*, That section fourteen of an act entitled "An act increasing temporarily the duties on imports, and for other purposes," approved July fourteenth, eighteen hundred and sixty-two, be, and the same hereby is, modified so as to allow cotton and raw silk, as reeled from the coccon, of the growth or produce of countries beyond the Cape of Good Hope, to be exempt from any additional duty when imported from places this side of the Cape of Good Hope, for two years from and after the passage of this act. (12 Stats. at Large, 742.)

The questions were simply (1) whether the 14th section of the act of July, 1862, just quoted above, was applicable to goods hitherto free of duty, and (2) whether this statute is reconcilable with the Constitution of the United States, in laying a duty at the port of New York on goods described as the "produce of countries beyond the Cape of Good Hope," such countries not being, from other (the Pacific) ports of the United States, within the description "beyond the Cape of Good Hope," the law, thereby, working a preference of the ports of one State over those of another, against uniformity of imposts. (Const. Art. 1, § 8, cl. 2; § 9, cl. 5.)

The court gave judgment for the defendant, the plantiffs thereupon bringing the case up upon writ of error. We subjoin the opinion of the court to this brief.

FIRST POINT.

The 14th section quoted applied both to dutiable and free goods.

The legislature so intended from their words. The first clause of the section provides "all goods, wares, and merchandise, the growth or produce of," etc., shall pay a duty of ten per cent. Had nothing more been said there might have been a doubt whether goods already paying duty should have it accounted against the ten per cent.; therefore the words were added "and *in addition* to the duties imposed on *any* such articles when imported directly from the place or places of their growth or production." "Any such articles" does not mean "all such articles," as if all were already dutiable, but means such of them as already pay a duty as well as such as do not already pay duty.

The amendment, also quoted from the act of 31 March, 1863, has been applied without distinction to both descriptions of goods, although in its terms it seems more restricted to one class, *i. e.*, those which had paid duty previously to the 14th July, 1862.

SECOND POINT.

The words "beyond the Cape of Good Hope" and "this side the Cape of Good Hope" are not pregnant, but are descriptive words. They designate countries in their absolute, not in their relative situation on the globe, and are consequently to be treated as equivalent to an enumeration of known places, and not as indicating a discrimination of duties according to relative situation of ports.

The words "here," "there," "hither," "beyond," "this side," etc., are words of hourly use and convenience, yet are entirely without meaning, except in the mouth of one whose situs is known to his hearer. They refer, not to the locality of the person spoken to, but that of the speaker. In order to attach any sense to them we must know where he is when he

employs them. It is not the locality of those who obey the law, but that of the law maker that adheres to the words, and gives them meaning, unless he otherwise specifies. If in this country the National Legislature speaks from one spot more than any other, it must be the Capitol. If in a statute of the United States the words "beyond the Rocky mountains" should occur, there is no doubt it would everywhere be understood to mean "westward of the Rocky mountains."

In this case the object was to ascertain the goods to be charged with the duty, and they were to be characterized according to the countries which had grown or produced them, or from which they had been imported. For this purpose, instead of a prolix enumeration, a familiar commercial phrase was employed as a substitute for the names "China," "Persia," "Japan," etc., etc, in Asia, and "England," "France," "Holland," etc., etc., in Europe. The phrase, therefore, ought to be treated as a designation, more or less, unequivocal of absolute localities from which the goods may *come*, and not as a definition of conditions under which such goods should or should not be chargeable, accordingly as they should be *brought* to one part or another. Even if the phrase is equivocal, it is more reasonable to suppose that it was intended to denote certain foreign countries known to be those from whence the goods proposed to be charged are produced or exported, than that it was intended to leave such countries entirely doubtful in order to impose an inequitable and unconstitutional impost.

But, moreover, in all kindred legislation of Congress, the phrase "beyond the Cape of Good Hope" has been used in the sense and sometimes in the words "*east* of the Cape of Good Hope," a construction of this act which obviates all obscurity.

HENRY STANBERY,
Attorney General.

O